

Mr. Sandes Plt. Sir John Shaw & al. Defts.

I N A

# Writ of Errour in Parliament.

## The Plaintiff's C A S E.

Pasch. 1697.

12 Car. 2.

2 Will. and Mar. Fol. 199. Fol. 207.

Fol. 213.

**I**N an *Indebitatus assumpt.* brought by the Plt. against the Defts. in the Excheqr. for 200*l.* upon *non assumpt.* pleaded, a Special Verdict was found, to the effect following.

That by the Act of Tunnage and Poundage, 12 Car. 2. there was granted to the Crown 1*s.* for every 20*s.* Value of Goods Imported according to the Book of Rates.

That by the 17th Rule in the Book of Rates, the Merchant is to be allow'd Five Pounds in the Hundred, for the Subsidy so appointed to be paid.

That by an Act 2 W. and M. there was granted to their late Majesties upon Yarne of Flax or Hemp, Imported between the 25th of December, 1690. and the 10th of November, 1695. an additional Duty of as much as was then charged upon the same Book of Rates.

That for this double Duty the Importer was (upon Security) to have four three Months to pay it, or after the rate of 10 per Cent per Annum discount upon prompt payment.

This double Duty, by the said Act, is to be collected and paid in the same manner, and with such advantages, and by such Rules as are mention'd and express'd in the Book of Rates, and the Rules thereunto annexed.

That the Plt. Imported a parcel of Yarne, and paid the old Subsidy, and had an allowance of 5*l.* per Cent, and gave Security for the new Impost, or double Duty, and had no allowance at all upon it.

That for another parcell Imported, he paid the old Subsidy and the new Impost or double Duty down, and had after the rate of 10*l.* per Cent per Annum discount, for four three Months, which comes to 6½ per Cent, but had not the allowance of 5*l.* per Cent, according to the 17th Rule in the Book of Rates.

So that the Question was, whether the Plt. ought not to have an allowance of 5*l.* per Cent, according to the 17th Rule in the Book of Rates, upon payment of this new Impost, or double Duty, over and besides the four three Months discount after the rate of 10 per Cent per Annum for prompt payment.

Judgment was given in the Exchequer by two of the Barons, (against Mr. Baron Lechmeres Opinion,) for the Defts. (the Lord Chief Baron not giving any Opinion upon the Merits of the Cause,) and this Judgment was affirmed in a Writ of Errour.

The Words of the Act are, For all Yarne an additional Duty of as much as what is now charged in the Book of Rates.

And surely the plain meaning of this is that Yarne shall pay a double Duty, or as much again as it did pay before, and to this the Plt. submits.

The Duties upon the Act of Tunnage and Poundage are usually called the old Subsidy, and the Duty upon this Act of 2 W. and M. the new Impost.

Suppose the Duty upon the Tunnage Act for a parcell of Yarne comes to 100*l.*

The 17th Rule in the Book of Rates gives an abatement to the Merchant of 5*l.* then the Kings Duty is but 95*l.* this is cleer, and not denied by the Defts, but so taken at the Custom-house, and paid by the Merchant.

Now sure the double Duty is but 95*l.* more, but the Defts. insift that it ought to be 100*l.* which the Plt. insifts is 5*l.* too much.

The Words of the Act 2 W. and M. are, An additional Duty of as much as is now charged in the Book of Rates; and, say they, the Charge is 100*l.* and the 5*l.* is only a deduction by the 17th Rule.

I. The Duty payable is but 95*l.* and no more can therefore be said charged, for the whole Rules, or Book of Rates are but one Imposition upon the Subject; and if it had been asked what is Yarne chargeable with, or what is payable for it upon the Tunnage and Poundage Act, it would by all Persons be answered 95*l.* because the deduction can never be said a Charge, but only a reducing the Duty to a certain Charge or Sum.

II. The Act of 2 W. and M. was to double the Duty only, and not in any case to give more then the former Duty.

III. And Thirdly, (which is hoped will put the Question out of Question) in the Act 2 W. and M. that doubles the Duty, is an expresse clause that this new Duty shall be collected and paid in the same manner, and with such advantages, and by such Rules as are mention'd in the Act of Tunnage and Poundage, and the Rules and Orders thereunto annexed.

So that clearly no more ought to be paid for the new Impost then was paid for the old Subsidy, this being intended only to double the Duty.

Wherefore 'tis humbly hoped the Judgment shall be reversed.

Sam. Dodd.